Bridge, Structural and Assn. of Eastern Ohio & Western Pennsylvania, see Iron Workers Local 207 (Steel Erecting Contractors) Ornamental Iron Workers of Local No. 207 of the International Association of Bridge, Structural and Ornamental Iron Workers (Steel Erecting Contractors Chapter of the Builders Association of Eastern Ohio and Western Pennsylvania) ***and*** **Thomas Sawyer.** Case 8–CB–7613

September 29, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND TRUESDALE

Upon a charge filed by Thomas Sawyer[1] on December 21, 1993, against Bridge, Structural and Ornamental Iron Workers of Local No. 207 of the International Association of Bridge, Structural and Ornamental Iron Workers (the Respondent), the General Counsel of the National Labor Relations Board issued a complaint and notice of hearing on March 14, 1994.

The complaint alleges that the Respondent violated Section 8(b)(3) of the Act by failing and refusing since about July 1, 1993, to provide the Steel Erecting Contractors Chapter of the Builders Association of Eastern Ohio and Western Pennsylvania (the Association) with the names of apprentices employed by Association members and other signatories to the 1991–1994 collective-bargaining agreement between the Respondent and the Association, as well as their hours of work, wages paid to them, and the identities of the contractors employing them. The complaint alleges that the Association has verbally requested the Respondent to furnish it with such information since about July 1, 1993, and that the requested information is necessary for and relevant to the Association's ability to police the terms of its contract with the Respondent, as well as the terms of the Ironworkers Joint Apprenticeship Training Program, which was established and maintained pursuant to terms set forth in the current collective-bargaining agreement.

On June 17, 1994, the Respondent, the Charging Party, and the General Counsel (collectively the parties) jointly filed a motion to transfer proceeding to the Board and a stipulation of facts. The parties agreed that the stipulation of facts and attached exhibits, including the charge, the complaint, and the answer to the complaint, constitute the entire record in this case, and that no oral testimony is necessary or desired by any of the parties. The parties further stipulated that they waived a hearing before an administrative law judge, and the making of findings of fact and conclusions of law and the issuance of a decision by a judge, and that they desired to submit this case directly to the Board for findings of fact, conclusions of law, and the issuance of an order by the Board.

On August 17, 1994, the Board issued an order conditionally approving the stipulation, granting the motion, and transferring the proceeding to the Board. Thereafter, the condition for approval of the stipulation (submission of a missing page of an exhibit attached to the stipulation) was satisfied, and the parties filed briefs.

The Board has delegated its authority in this proceeding to a three-member panel.

On the basis of the record and the briefs, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Association has been an organization composed of various employers engaged in structural steel erection, including T. Bruce Campbell Construction Co., Inc., J. J. Connor Co., Inc., Ferguson Steel Erection, Inc., and Connell Steel Erectors, Inc. (Connell).

At all material times, Connell, an Ohio corporation with an office and place of business in Youngstown, Ohio, has been engaged in the erection of structural steel. Annually, in conducting these business operations, Connell performs services valued in excess of $50,000 in States other than the State of Ohio.

At all material times, Connell and the Association have been engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. At all material times, the Respondent has been a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *Stipulated Facts*

The parties stipulated that the following employees of the employer members of the Association constitute a unit (the unit) appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All journeymen and apprentices performing ironwork within the Ohio counties of Trumbull, Mahoning, and Columbiana, and the Pennsylvania counties of Mercer, and Lawrence, but excluding all office clerical employees and professional employees, guards and supervisors as defined in the Act and all other employees.

Over the past several decades, the Respondent entered into a series of collective-bargaining agreements with the Association. The most recent such agreement (the collective-bargaining agreement) was effective by its terms from June 1, 1991, to June 1, 1994. The par-

[1] Thomas Sawyer filed the charge as vice president and on behalf of the Association, further identified below.

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ties stipulated that in these collective-bargaining agreements, including the current one, the Association and its member employers granted recognition to the Respondent as the exclusive collective-bargaining representative of the unit, and the Respondent has been recognized as such representative by the Association without regard to whether the majority status of the Respondent had ever been established under the provisions of Section 9(a) of the Act. Based on the parties' stipulation, we find that for the period from June 1, 1991, to June 1, 1994, the Respondent has been the limited exclusive collective-bargaining representative of the unit.

Pursuant to the collective-bargaining agreement, the Respondent and the Association are also parties to the Agreement and Declaration of Trust of Mahoning Valley Structural Ironworkers Joint Apprenticeship Fund (Declaration of Trust). This document sets forth the terms governing the apprenticeship fund and the committee that administers the apprenticeship program.[2] The committee has established standards and rules for apprentices.

The collective-bargaining agreement contains several provisions relevant to the instant dispute. Article 46 sets forth the wage rates for journeymen, and the fringe benefit rates for journeymen and apprentices based on hours worked or paid. Article 51 sets forth the apprentice wage rates as a percentage of the journeymen rate dependent on the apprentice's years of service. Article 1 states in pertinent part as follows:

> The parties hereby declare their mutual objective to be that of achieving and maintaining uniform and acceptable standards of employment to benefit members of the trade and to build a reservoir of competent and efficient journeymen. The parties state such objective to be basic to the consideration for this agreement. *The Union therefore agrees to insist the enforcement of this agreement with respect to any contractor or employer who is not a member of the above Chapter but who hires members of the Union or employees working at the trade within the jurisdictional area of this agreement and the Union further agrees to obtain from each such contractor or employer a signed copy of this agreement for the files of the chapter.* [Emphasis added.]

Since about July 1, 1993,[3] the Association has verbally requested that the Respondent furnish it with the following information: (1) the names of apprentices employed by Association members and other employers either signatory to or bound by the collective-bargaining agreement; (2) the apprentices' hours of work; (3) the wages paid to them; and (4) the identities of the contractors which employed them. This information was requested in whatever form available, including an Average Hourly Wage Report concerning apprentices furnished to the Respondent by First Benefits, the entity which administers the health and welfare, pension, and other benefit funds under the collective-bargaining agreement. The report is compiled by First Benefits for the Respondent from information provided to First Benefits on Monthly Fringe Benefit Report forms by the approximately 25 Association members who have signed the collective-bargaining agreement, and by other employers who are either signatory to or bound by the terms of the collective-bargaining agreement.

Prior to July 1, the Respondent provided the Association with the Average Hourly Wage Report on a monthly basis. Since about July 1, the Respondent has failed and refused to furnish the Association with the above-specified information. On or about December 1 however, the Respondent offered to provide the Association with all of the above-specified information, except for the wages paid to apprentices and dues remitted on their behalf by the employers. The Association responded by stating that the Respondent's offer was unsatisfactory because it did not include agreement to provide specific information concerning apprenticeship wages. The Association has not attempted to secure this information from its members and asserts that it has no ability to secure such information from nonmembers.

B. *Contentions of the Parties*

1. The Association's contentions

a. *Contained in the stipulation*

The parties stipulated that the Association asserts that the information sought by it is necessary to police the collective-bargaining agreement for the following reasons, among others:

(1) The wage and hour information requested is relevant to the Association's interest in policing the Respondent's agreement to insist on the enforcement of contractual terms with respect to nonmember employers, as provided in article 1 of the collective-bargaining agreement.

(2) Article 51 of the collective-bargaining agreement provides for an apprentice rate set at a percentage of the journeyman rate dependent on the apprentice's years of experience. The Association has an interest in insuring that its members are not forced to pay more than proper wages for apprentices. Furthermore, Association members are interested in making sure that nonmembers are adhering to the schedule, to avoid a competitive disadvantage.

[2] Apprenticeship Standards for Mahoning Valley Structural Ironworkers Joint Apprenticeship Committee, comprised of an equal number of employer and union representatives.

[3] All subsequent dates are 1993, unless otherwise stated.

(3) In the interest of continuing work and customer good will, the Association is entitled to rely on the Respondent's assurances concerning wage rates so that the Respondent's members are paid commensurate with their experience. Preservation of the integrity of work done by the craftsmen insures more work for Association members and, thus, the Respondent's members.

(4) Because fringe benefits are dependent on actual wages paid or hours worked, the Association has an interest in policing fringe benefit rates as well, so that no competitive advantage is given to nonmember contractors or no competitive disadvantages are imposed on members of the Association.

(5) Wage and hour information requested by the Association is relevant to the Association's interest in policing the rules and standards of the Joint Apprenticeship Program, because the progression of apprentices to the status of journeymen is dependent on hours of work in the trade.

b. *Contained in its brief*

In its brief, the Association asserts, with citation to supporting authorities, that a labor organization's duty to furnish information is parallel to that of an employer, which the Association states is the obligation to furnish relevant information to enable a labor organization to carry out its duties as a bargaining representative. The Association asserts that wage and related information is presumptively relevant, and must be provided on request, even absent a showing of specific relevance and without regard to the immediate relationship of the requested information to contract administration. The Association further asserts that it has, in any event, established specific reasons for why the requested information is necessary for the Association to carry out its duties as a bargaining representative, as set forth in the stipulation.

The Association also endorses the General Counsel's argument that article 1 of the collective-bargaining agreement is the functional equivalent of a ''most favored nations'' provision, and that a union has an obligation to provide an employer's association with a wide variety of information relating to enforcement of such a clause. The Association further asserts that ''most favored nations'' clauses create a duty on the part of the union to provide information concerning wages, hours, and terms and conditions of employment of the employees of other employers.[4]

The Association argues that the Respondent's defenses should be rejected. In regard to the Respondent's contention that the Association would in turn furnish the information to the Joint Apprenticeship Committee that administers the apprenticeship program, the Association argues that such actions taken by employers to police collective-bargaining agreements are precisely the relevant considerations which support a request for information such as the Association has made here. The Association also argues that the Respondent's defense that the requested information is proprietary should be rejected, on the grounds that the Respondent continually provided the requested information to the Association prior to July 1; the information was requested in whatever form available; it is presumptively relevant; and there is no indication that the Association would misuse the information. Finally, the Association argues that the fact that the Respondent has the requested information in its possession, in the form of the Average Hourly Wage Report, defeats any contention by the Respondent that the Association should look elsewhere to obtain the information.

2. The Respondent's contentions

a. *Contained in the stipulation*

The parties stipulated that the Respondent asserts that it failed and refused to furnish the Association with the information requested in part because the Respondent believed that the Association would in turn furnish that information to the committee which administers the apprenticeship program. The Respondent further asserts that it believed that the committee, which in the past had taken action against certain apprentices under the apprenticeship standards and rules by requiring certain apprentices to relinquish compensation received over and above the wage rate specified in the collective-bargaining agreement for apprentices, would take similar action against apprentices based on the information requested by the Association.

The Respondent also asserts that the information sought from it by the Association is solely intended to be used for the purpose of enforcing the standards and rules for apprentices and, in particular, to determine whether or not disciplinary action is warranted against any apprentice who has received more than the hourly wage specified under the collective-bargaining agreement for apprentices. The Respondent further asserts that the information sought by the Association, concerning the gross hourly wages of apprentices, is information which is solely relevant and proprietary to the Respondent for the purpose of determining the accuracy of the amount of dues being remitted to the Respondent by the employers pursuant to the collective-bargaining agreement and that, if provided to the Association, it would furnish to the Association information concerning dues income received by the Respondent.

b. *Contained in its brief*

In its brief, the Respondent asserts, with citation to supporting authorities, that the Association has failed

[4] Citing *Chicago Typographical Union 16 (Chicago Sun-Times)*, 296 NLRB 180 (1989).

to establish that it needs the requested information for contract enforcement purposes, in the absence of a showing that the Association, or any member, or any nonmember has raised a claim that the rates paid to some apprentices are not consistent with the contract or that any member or nonmember is being required by any employee or the Respondent to pay apprentices beyond the rate required under the collective-bargaining agreement.

The Respondent further asserts that the apprenticeship program is an entity separate and apart from the Respondent and the Association, established under Section 302(c)(5) of the Act, and governed by the Declaration of Trust, which is jointly administered by Respondent and Association representatives. The Respondent contends that if the need to obtain the information is to determine whether the apprentices' wages are contrary to the rules and standards of the joint apprenticeship program, enforcement of those rules and standards would be the function not of the Association, but rather of the apprenticeship program's committee of trustees, and thus the apprenticeship program, not the Association, must seek the information in question.

The Respondent also asserts that the requested information is available to the Association from sources other than the Respondent—specifically, the Association's approximately 25 members, as well as nonmembers, or even from First Benefits itself. Finally, the Respondent asserts that the requested information is confidential and proprietary because the Association could easily calculate from gross hourly wage figures the amount of dues the Respondent is receiving from each employee.

3. The General Counsel's contentions

In his brief, the General Counsel asserts, with citation to supporting authorities, (1) that a union's duty to provide information to an employer with which it has a collective-bargaining agreement is the same as the duty of an employer to provide information to a union with which it has a collective-bargaining agreement, and (2) that information regarding employees' names and wages/benefits must be provided on request even absent a showing of specific relevance. The General Counsel contends that, in any event, the requested information is clearly relevant to a variety of contractual enforcement issues: (1) the Association's interest in insuring that proper apprentice wage rates are being paid and that there is compliance with the terms of the collective-bargaining agreement; and (2) the Association's interest in insuring that the Respondent is living up to its commitments under article 1 of the collective-bargaining agreement in regard to apprentices not working for Association members. In this latter regard, the General Counsel contends that article 1 is akin to a ''most favored nations'' clause, and that a union has an obligation to provide an employer association with a wide variety of information relating to enforcement of such a clause.[5]

The General Counsel concedes the accuracy of the Respondent's claim that the Association will use the requested information to enforce apprentice rates and standards. But the General Counsel argues that this claim must also be rejected as grounds for not providing the Association with the information, because policing the collective-bargaining agreement and the apprentice program arising under it is a legitimate use of the information.

The General Counsel also argues against the Respondent's claim that the Association is not entitled to receive the information from the Respondent because it can obtain it from its members or from First Benefits itself. The General Counsel argues that ''asking the association to poll its members is as ludicrous as suggesting that a union could poll its employee members about wage rates.'' The General Counsel further argues that there is nothing in the stipulation that provides a basis for the Respondent's assertion that First Benefits would respond favorably to such a request. Finally, the General Counsel argues that the Respondent's confidentiality/proprietary argument should be rejected, on the grounds that the requested information contains no dues amounts, that the Respondent formerly provided the information for the Association, and that the Respondent's assertion that dues amounts could be calculated is too remote and speculative to support a claim of confidentiality.

C. *Analysis and Conclusions*

1. Applicable principles

An employer has a duty to provide to a union, on request, information that is relevant to the collective-bargaining relationship between the employer and the union and which is reasonably necessary for the union's performance of its function as bargaining representative.[6] Conversely, a union's duty to furnish such relevant and necessary information to an employer is commensurate with and parallel to an employer's duty to furnish it to a union.[7]

Information about terms and conditions of employment of bargaining unit employees is presumptively relevant and must be provided on request, without

[5] Citing *Teamsters Local 272 (Metropolitan Garage)*, 308 NLRB 1132 (1992); *Electrical Workers IBEW Local 1186 (Pacific Electrical Contractors)*, 264 NLRB 712 (1982).

[6] *East Tennessee Baptist Hospital*, 304 NLRB 872, 883 (1991), enfd. in pertinent part 6 F.3d 1139 (6th Cir. 1993).

[7] *Teamsters Local 921 (San Francisco Newspaper)*, 309 NLRB 901, 904 (1992); *Service Employees Local 144 (Jamaica Hospital)*, 297 NLRB 1001, 1003 (1990); *Detroit Newspaper Printing & Graphic Communications Union Local 13 (Oakland Press)*, 233 NLRB 994, 996 (1977), enfd. 598 F.2d 267 (D.C. Cir. 1979). See also *Machinists Lodge 78 (Square D Co.)*, 224 NLRB 111 (1976).

need on the part of the requesting party to establish specific relevance or particular necessity.[8] Requests for information relating to persons outside the bargaining unit require a special demonstration of relevance.[9] The standard to be applied in determining the relevance of information relating to nonunit employees is, however, a liberal ''discovery type standard.''[10] And generally, a party's right to receive information from another party is not defeated merely because the requesting party may acquire the information through an independent investigation or from some other source.[11]

2. Conclusions

Applying the above principles to the facts of this case, we find that insofar as the Association's inquiry pertains to unit employees (i.e., employees of the Association's member employers), the apprentice wage and employment information sought is presumptively relevant to the Association's proper performance of its duties under the collective-bargaining agreement.[12]

Insofar as the information request pertains to employees outside the bargaining unit (i.e., employees of non-Association employers who are nevertheless signatory to or bound by the collective-bargaining agreement), we find that the specific provisions of the parties' collective-bargaining agreement establish the relevance of the Association's inquiry. Under article 1, the Respondent is obligated to insist on the enforcement of contractual terms with respect to non-Association employers. Two such contractual terms are articles 46 and 51, specifying the fringe benefits and wages rates apprentices are to be paid. The Association is reasonably entitled to monitor the Respondent's compliance with the above obligations so that the Association may attempt to ensure that non-Association employers and contractors are not obtaining a competitive advantage by paying apprentices less than contractual wage rates or benefit amounts.[13]

Turning to the Respondent's defenses, we find no merit in the Respondent's argument that it is privileged to refuse to provide the Association with the requested information because it fears that the Association will in turn pass that information on to the joint committee that administers the joint apprenticeship training program. There is no evidence that that committee has acted improperly on such information that has been provided to it in the past, and no evidence to indicate that it will do so in the future.

We are equally unpersuaded by the Respondent's assertion that the requested information concerning gross hourly wages of apprentices is ''solely relevant and proprietary to the Respondent'' (emphasis added) for the purpose of determining the accuracy of the amount of dues being remitted to the Respondent, on the asserted grounds that if this information is provided to the Association, it would ''furnish to the Association information concerning dues income received by the Respondent.'' Here again, we find that the presumptive and established relevance of the requested information to the Association far outweighs the Respondent's undefined and unsupported concern about any effect on the Respondent resulting from the Association being in a position to attempt to calculate the Respondent's income from dues paid by the apprentices.[14]

Finally, we reject the Respondent's argument in its brief that it is privileged to refuse to provide the Association with the requested information because the information is assertedly available to the Association from its own members and from non-members, from First Benefits, or from the apprentices themselves. As noted above, in circumstances such as these, a party is not obligated to use outside sources, even if readily available, to obtain relevant information already in the possession of the other party.[15] The requesting party is entitled to receive such information directly from the other party.[16]

Accordingly, in light of all of the above considerations, we conclude that the Respondent has violated Section 8(b)(3) of the Act as alleged by failing and refusing to provide the Association with the requested information.

CONCLUSIONS OF LAW

1. The Association and Connell at all material times have been engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Respondent at all material times has been a labor organization within the meaning of Section 2(5) of the Act.

3. By failing and refusing to supply the Association with the information it requested since about July 1, 1993 (i.e., the names of apprentices employed by Association members and other employers who are either signatory to or bound by the parties' June 1, 1991–June 1, 1994 collective-bargaining agreement; the

[8] See *Circuit-Wise, Inc.*, 308 NLRB 1091, 1097 (1992) (names); *Patriot-News Co.*, 308 NLRB 1296, 1297 (1992) (wages), enfd. mem. 5 F.3d 1490 (3d Cir. 1993).

[9] *Ohio Power Co.*, 216 NLRB 987, 991 (1975), enfd. 531 F.2d 1381 (6th Cir. 1976).

[10] *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 437 (1967).

[11] *New York Times Co.*, 265 NLRB 353 (1982); *Kroger Co.*, 226 NLRB 512, 513 (1976).

[12] *Circuit-Wise, Inc.*, supra; *Patriot-News Co.*, supra.

[13] See *East Tennessee Baptist Hospital*, 304 NLRB 872, 884 (1991); *Globe Stores*, 227 NLRB 1251 (1977).

[14] We note that the Respondent provided the Association with the information requested on a regular monthly basis prior to July 1, 1993—with no evident or asserted improper effects on the Respondent.

[15] *New York Times Co.*, supra; *Kroger Co.*, supra. See *Plasterers Local 346 (Brawner Plastering)*, 273 NLRB 1143 (1984).

[16] See *Service Employees Local 144 (Jamaica Hospital)*, 297 NLRB 1001, 1003 (1990).

hours worked by and wages paid to the apprentices; and the identities of the contractors that employed them), the Respondent has violated Section 8(b)(3) of the Act.

4. The above unfair labor practice affects commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices in violation of Section 8(b)(3) of the Act, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

ORDER

The National Labor Relations Board orders that the Respondent, Bridge, Structural and Ornamental Iron Workers of Local No. 207 of the International Association of Bridge, Structural and Ornamental Iron Workers, Youngstown, Ohio, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Failing and refusing to provide the Association with the information it requested since about July 1, 1993 (i.e., the names of apprentices employed by Association members and other employers who are either signatory to or bound by the parties' June 1, 1991–June 1, 1994 collective-bargaining agreement; the hours worked by and wages paid to the apprentices; and the identities of the contractors which employed them).

(b) In any like or related manner engaging in conduct in derogation of its statutory duty to bargain in good faith.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, furnish the Association with the information specified in paragraph 1(a) of this Order, above.

(b) Post at its office and meeting halls copies of the attached notice marked ''Appendix.''[17] Copies of the notice, on forms provided by the Regional Director for Region 8, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Deliver to the Regional Director for Region 8 signed copies of the notice in sufficient number for posting by the Association at its premises, if it wishes, and by the Association's employer members at their premises, if they wish, in all places where notices to employees are customarily posted.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[17] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail or refuse to provide the Steel Erecting Contractors Chapter of the Builders Association of Eastern Ohio and Western Pennsylvania, on its request, with the names of apprentices employed by Association members and other employers who are either signatory to or bound by our June 1, 1991–June 1, 1994 collective-bargaining agreement with the Association; the hours worked by and wages paid to those apprentices; and the identities of the contractors which employed them.

WE WILL NOT in any like or related manner engage in conduct in derogation of our statutory duty to bargain in good faith.

WE WILL, on request, provide the Association with the above information.

BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS OF LOCAL NO. 207 OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS